IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 3824 of 2004(E)

PETITIONER:

N.O. JOSEPH, HB 9, DOOR NO.39/5378,
PANAMPILLY NAGAR, KOCHI.

BY ADV. SRI.J.JULIAN XAVIER,
SRI.FIROZ K.ROBIN.

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, LOCAL SELF GOVERNMENT, THIRUVANANTHAPURAM.

2. STANDING COMMITTEE FOR APPEAL ON TAXATION, CORPORATION OF KOCHI, REPRESENTED BY ITS CHAIRMAN.

3. SECRETARY, CORPORATION OF KOCHI, KOCHI.

BY ADV. SRI.A.K.SAITHU MOHAMMED,
GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.3824/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1. SERIES: COPIES OF THE REPRESENATIONS DTD. 05/04/2002, 07/06/99, 01/10/97, 16/06/97 FILED BY THE PETITIONER BEORE THE R.3.

EXT.P.2: COPY OF THE LETTER DTD. 02/05/2002 OF THE SECRETARY, CORPORATION TO PCSJ.

EXT.P.3: COPY OF THE RECEIPT SHOWING THE PROPERTY TAX LEVIED BY THE R.3. FROM HOUSE NO. 39/5357.

EXT.P.3(A).EXT.P.3: COPY OF THE RECEIPT SHOWING THE PROPERTY TAX LEVIED BY THE R.3. FROM HOUSE NO. 39/5383.

EXT.P.4: COPY OF THE PETITION DTD. 27/02/2003 FILED BY THE PETITIONER.

EXT.P.5: COPY OF THE LETTER DTD. 10/03/2003 OF THE PCSJ.

EXT.P.6: COPY OF THE DEMAND NOTICE DTD. 10/03/2003.

EXT.P.7: COPY OF THE APPEAL DTD. 05/04/2003 FILED BY THE PETITIONER BEFORE THE R.2.

EXT.P.8: COPY OF THE ORDER DD. 13/08/2003.

EXT.P.9: COPY OF THE REVISION DTD. 03/09/2003 FILED BY THE PETITIONER BEFORE THE R.1.

EXT.P.10: COPY OF THE ORDER DTD. 28/11/2003 PASSED BY THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.3824 of 2004-E

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Dated this the 27th day of July, 2007.

JUDGMENT

The complaint of the petitioner is that the property tax payable by him for his building HB9 in Panampilly Nagar is assessed at more than double the rate payable for the similar other buildings in that locality. It is his specific case in paragraph 4 of the writ petition and in Ext.P7 appeal before the Standing Committee for Appeal on Taxation that HB 4, HB 6 and his building HB 9 are all having the plinth area of 950 sq. ft. and are adjacent houses on the same road abutting a street. While the building HB 4 is assessed to an yearly tax of Rs.1,154/- and the building HB 6 is assessed to Rs.998/-, the petitioner's building HB 9 is assessed to an annual tax of Rs.2,362/-. Though this has been specifically raised before the

Standing Committee, Ext.P8 order has been issued by merely making an order without reference to any of those contentions in Ext.P7 appeal. The Government closed the revision filed by the petitioner by a cryptic communication (Ext.P10).

2. There is no counter affidavit on record. This means that the Corporation does not dispute the facts stated above, particularly when similar buildings which stand adjacent and constructed by the Housing Board following a particular pattern in Panampilly Nagar are assessed to property tax at different rates. This is impermissible in terms of the provisions of the Kerala Municipality Act, 1994 which obliges application of the same rate of tax and uniform application of such rates for similar buildings. Otherwise, the imposition would become a situation of differential treatment of similarly situated persons. Under such circumstances, the impugned levy of property tax is unsustainable. The same is accordingly quashed. In the absence of any contrary

contentions, it is declared that the levy of the building tax from the petitioner for the relevant period will be only at the rate of Rs.1,154/- annually. This declaration shall be the basis on which the Corporation will work out the outstandings, if any, from the petitioner and if it is found that he has made any over payment following the above basis, such over payments will be adjusted towards future dues.

The writ petition is allowed as above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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